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Taxation.

EDITOR GAZETTE:—As our method of assessment and collection of taxes, is more defective than it ought, or need to be, even under the present laws, I beg to present some thoughts upon the subject even at the risk of repeating what I have before said; some of the defects cannot be remedied without legislation or the action of the Supreme Court, but others can and should be; they were introduced without legislation, in their working they have been found to contravene both the Constitution and laws, and if so, they should not be continued.

A Constitution is defined to be, "a system of "fundamental rules, principles, and ordinances "for the government of a State or Nation. In *free* "*States* the Constitution is paramount to the "statutes or laws enacted by the Legislature, "limiting and controlling its power. In the "United States the Legislature is created, and its "powers designated by the Constitution." It follows that any law, which in practice, is found to be inconsistent with any principle of the Constitution is void, and is declared so by the court, on occasion, or nullified by legislation. It also follows that any law admitting of two interpretations or constructions, one of which, in practice would be inconsistent with any principle of the Constitution must be interpreted so as not to conflict with it—now the principles of the Constitution demand equality in the distribution of the public charges, that all should be taxed alike to meet them. If therefore any rule or law is found, in its application, to operate unequally upon one more than another, then if a rule, not imposed by law, it should be abrogated, and if a law, it should be remedied at the earliest possible moment by repeal, or the court. The wrong has a remedy, and it should be applied at the earliest moment. Legislators are fallible and in making laws do not always see just what their operation will be; neither do executive officers empowered by law to make rules within the law, always see the bearing they may have in their application to existing laws. Now the rule by which debts due to foreign creditors cannot be deducted, like debts due in the Kingdom, from the returns made of property to be taxed, was made to meet a specific class of cases, and when applied to another class did great injustice, by bringing upon the tax-payer a double or three-fold tax, and in the very nature of its application, might bring a much heavier one still. Its application, if as a general rule, has no fixed limit, and should never be applied, as a *general* rule. A note worth $10,000, but with a high credit might borrow for B $50,000—the latter might expend the whole in valuable improvements and be taxed upon $50,000, whilst A would also be taxed under this rule on that sum besides his $10,000—but in cases like those, whose supposed existence gave rise to the rule in 1867, *to wit*: of stocks, of goods bought on credit and receiving Government protection like all others, it would give to the treasury only its just dues for that protection.

The property tax first imposed was ¼ of 1 per cent., then ½. The practice then was to assess as property, every species usually so designated as well as all solvent debts, whether of book, note or mortgage but allow the assessed party to deduct from the aggregate, all debts due from him to others the balance remaining, being the sum of all his property to be assessed. The rule of 1867, was adopted to cover cases of the kind above mentioned. But whilst this method of assessment did essential justice to the tax payers and Government—the assessors complained that the mortgages being mostly held in Honolulu, the deduction of the mortgaged estate, left to them the work of assessment, but gave to the Honolulu assessor the compensation which should be theirs, and the complaint seemed to be just. The law of 1876 was designed to remedy, this seeming wrong or inequality. It made all real estate assessable in the district where situated irrespective of any incumbrance which there might be upon it and the word mortgage, was dropped from the definition of property and "unsecured debts" substituted in its place, *to avoid double taxation*, of the same property. For, if the estate must be taxed in its district, then to tax the mortgage also whose only value lay in the conditional and preferred title it gave to the estate, would be a double taxation of the same property. Under the former practice of deducting the mortgage, the estate paid taxes only on such portion as remained, after the mortgage and all debts were deducted, the mortgage paying the rest. This is according to the law just passed in the State of Massachusetts. It is the general practice now in California under the new Constitution. Money is quoted in the papers of to-day. "*Money for mortgages on city real estate, taxes on the same guaranteed 3 to 9 per cent. being equal to 6 to 7 to the borrower.*" This and the new Massachusetts law corresponds exactly with the former practice here. In both cases the tax is paid by the lender, but who shall ultimately bear it, usually depends on private arrangement between the parties, that is, if the estate paid the taxes instead of the mortgage it would pay so much less interest, and vice versa—The practice here, before the law of 1876, and the present practice of California and the recent law of Massachusetts is simpler than the practice here now under the law of 1876. Whilst the former practice did ample justice to the government, there was less liability of injustice to tax-payers. Under the law of 1876, the tax-payer is not required to return *secured debts*, as property, for the reason that the property, upon the debt secured, being generally real estate *is required*, by the same law, to pay the taxes. This was intended to prevent double taxation by the payment on both the property and the security, and whilst it has done so in specific cases, in others, more numerous, the law prohibiting the deduction of anything from *real estate values*, for debts due by the owner, has unavoidably *led to double taxation*, contrary to the intention of the law, and in violation of the equity clause of the constitution. The deduction of debts from the inventory of property is allowed to the amount of the value of the personal property, but if the debts exceed this amount, nothing can be deducted from the value of real estate as an offset, but double taxation, under this law, is a necessary result, for just what the debts exceed the personal property, for example, A. has real estate valued at $100,000 and personal property valued at $25,000. He owes B. $50,000, but has given B. no security—B. must return his *unsecured debt* of $50,000. A. returns his real estate at $100,000, and his personal property at $25,000—but he deducts from his debt $25,000 the value of his personal property but can not deduct anything from the real estate value, he therefore pays on $100,000 and B. pays on his $50,000. Prior to 1876, A. would have deducted his whole debt of $50,000, and paid tax upon $75,000—whilst B. as now pays on his $50,000—at present there is double payment on $25,000. In the above case—a law, which cannot be executed, without a violation of the principles of the constitution *must* be unconstitutional—but although this is self evident, and although, *it is known* to have unjustly and unconstitutionally wronged individual tax-payers of thousands of dollars, it cannot be set aside without a decision of the court or legislation, but must still be executed—continuing the infliction of its wrong on individuals. Not so, the *rule* in reference to foreign debts. That is not the creature of the law, or the constitution, but in its operation adverse to the latter, and the power, that created it, should annul or modify it, so that it would cease to do the individual wrong, which it has done, nor, when the wrong *is known*, is it a sufficient reason for its continuance, and the continued wrong done, *and known to be done*, to individuals that its abrogation may, by the fraud feared from individuals, bring some loss to the government. Is the fear that some loss may accrue to the treasury, from dishonesty of persons a reason why the government may continue to perpetrate *a known* wrong upon innocent persons in contravention of the principles of the constitution by which it is governed. If the treasury should suffer all the possible loss, which it fears from individual dishonesty there is not a probability that it would equal in amount the loss which individuals have suffered, from the unconstitutional operation of this rule, and I cannot feel that it is not as wrong for the government to defraud individuals as it is for individuals to defraud the government. This rule should be altered or modified *at once*, and the law should be amended or set aside, as soon as possible.

The simplest and best law is to tax property wherever found, to the person in possession, as introduced into the Legislature of 1880, by Mr. Preston and the next simplest, is to restore the practice as it was prior to 1876, and if need be, so to amend the law as to conform it to the practice.

Unsecured debts leaves *all secured debts* out of the list of property to be returned, without limitation or exception, and no interpretation *can be* used which, if carried out, would result in *double taxation*, for this is not only self evidently contrary to the constitution, but has been declared to be so by the Supreme Court.

The principles here discussed are so plain and simple, as to be self-evident to every ordinary mind, and as prompt action upon them, as the circumstances will permit, will soon restore this branch of the public service to the satisfactory condition in which it was practically, prior to the law of 1876, first enforced in 1877. S.N. CASTLE.